

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2008-94-S - ORDER NO. 2008-608  
SEPTEMBER 10, 2008

IN RE: Application of CLS Utilities, LLC for	) ORDER APPROVING
Approval of the Agreement, Bond,	) OPERATING MARGIN,
Operation, Monthly Rate and Service Area	) FLAT MONTHLY FEE
for the Sewage Pump Station in The Harvest	) BILLED TO
Glen Subdivision in Greenville County,	) HOMEOWNERS
South Carolina	) ASSOCIATION, AND
	) SETTLEMENT
	) AGREEMENT

**Introduction:**

This matter comes before the Public Service Commission of South Carolina (“Commission”) on an application from CLS Utilities, LLC (“CLS”) for consideration of a Pump Station Agreement, bond, operation, monthly rate and service area for the sewage pump station in the Harvest Glen Subdivision in Greenville County, South Carolina. The parties in this case are CLS and the Office of Regulatory Staff (“ORS”). Notice of the relief sought by the Applicant was duly published in *The Greenville News* newspaper of Greenville County, but no parties intervened.

On June 11, 2008, the Commission received a proposed settlement agreement from the parties regarding the issues presented by the application. A hearing in this matter was conducted on June 26, 2008. We hold that the settlement agreement in this case is a complete, fair, and reasonable resolution of this proceeding.

**Jurisdiction:**

S.C. Code Ann. § 58-3-140 (A) (Supp. 2007) vests the Commission with the “power and jurisdiction to supervise and regulate the rates and service of every public utility in this State...” In carrying out these duties in relation to the sewage pump station in the Harvest Glen Subdivision and subsequent settlement agreement with ORS, the Commission’s published “Settlement Policies and Procedures” (Revised 6/13/2006) are applicable to guide this proceeding. Specifically, Section II of the Settlement Policies and Procedures, titled “Consideration of Settlements,” states:

When a settlement is presented to the Commission, the Commission will prescribe procedures appropriate to the nature of the settlement for the Commission’s consideration of the settlement... [W]hen the settlement presents issues of significant implication for other utilities, customers, or the public interest, the Commission will convene an evidentiary hearing to consider the reasonableness of the settlement and whether acceptance of the settlement is just, fair, and reasonable, in the public interest, or otherwise in accordance with law or regulatory policy. Approval of such settlements shall be based upon substantial evidence in the record.

We find this case presents issues of significant implication for the utility and the public interest, and since a hearing has been held to consider the merits of this case regarding the parties’ stipulations, we proceed to evaluate the testimony, settlement agreement and other evidence submitted in the case.

**Testimony and Evidence:**

At the hearing in this matter, CLS was represented by Richard Whitt, Esquire and presented the testimony of James Caldwell. ORS was represented by Jeff Nelson, Esquire and presented the testimony of Elizabeth Ford. In addition, the parties’ settlement agreement was entered into evidence. During the hearing it was clarified that

this Docket was bifurcated into two parts by Commission Order No. 2008-490 (July 15, 2008), separating issues of the bond, operation, monthly rate, and service area for the sewage pump station in the Harvest Glen Subdivision, which was considered at this hearing, from the single issue of whether the Pump Station Agreement is approved, which will be considered at a later date.

James Caldwell, owner and operator of CLS Utilities, LLC, testified that CLS can adequately operate the wastewater pump station as specified in the settlement agreement. During his testimony, he stated that although CLS will only operate the pump station and has no connection with any developer, it is his belief construction of the pump station would begin as part of the infrastructure phase of development for the Harvest Glen Subdivision. Additionally, he testified that an alarm system will notify CLS of a pump station malfunction with a response time of approximately one hour and forty minutes.

Elizabeth Ford, a program specialist for ORS who deals with water and wastewater, testified the proposed Harvest Glen Subdivision will be subdivided into one hundred sixty-one residential lots. The wastewater collection system, pumping station, and associated force main will be constructed in conjunction with the development of Harvest Glen. The wastewater collection system will be owned, operated, and maintained by the Metropolitan Sewer Sub-District ("MSSD") of Greenville, South Carolina. MSSD will charge each single family residence of Harvest Glen individually for its wastewater collection and treatment services and will convey the wastewater to CLS at the proposed wastewater pumping station. The wastewater pumping station and associated force main will be owned, operated and maintained by CLS, and its only

customer will be the Harvest Glen Homeowners Association (“HGHOA”). CLS will then convey the wastewater through the pumping station and associated force main to an existing wastewater pumping station located along the south side of Griffin Road that is owned, operated, and maintained by the MSSD.

She also testified that James Caldwell presently operates and maintains twenty-eight private wastewater lift and/or water booster stations and thirty-one municipal lift stations in North and South Carolina. Additionally, Caldwell provides the technical and managerial qualifications needed to operate CLS. ORS reviewed the proposed operational expenses as outlined in the Wastewater Rate Study prepared by Alliance Consulting Engineers, Inc. ORS anticipates CLS will maintain financial viability at the proposed rates after subdivision build out of one hundred and sixty-one residential units. At build out the proposed rates result in a 12.51% operating margin as calculated by ORS. Lastly, Ford reviewed the settlement agreement in her testimony, which is discussed below.

**Discussion of Settlement Agreement:**

In this establishment case for certification of rates brought by CLS, the utility contracted with its sole customer, the Harvest Glen Homeowners Association, to operate a pump station that transports wastewater from the Harvest Glen subdivision. According to the settlement agreement, which is attached to this Order, CLS has contracted with the HGHOA to bill a set monthly fee of \$3,520.25 to operate and maintain the pump station. This amount was determined by projecting the annual operation and maintenance expenses through a Wastewater Rate Study prepared for CLS by Alliance Consulting

Engineers. In addition to this flat monthly fee, the parties have also agreed to an operating margin of 12.51% and have submitted a performance bond of \$100,000.<sup>1</sup>

**Findings of Fact and Conclusions of Law:**

1. CLS Utilities, LLC is a “public utility” as that term is defined by S.C. Code Ann. § 58-5-10(4) (Supp. 2007).

2. This proceeding falls under the jurisdiction of the Commission by the authority of S.C. Code Ann. §§ 58-3-140(A) (Supp. 2007) and 58-5-210 (1976).

3. The Commission’s published “Settlement Policies and Procedures” (Revised 6/13/2006) are applicable to guide this proceeding, and this case presents issues of significant implication for the utility and the public interest.

4. CLS has submitted an appropriate performance bond as required by S.C. Code Ann. § 58-5-720 (Supp. 2007). The amount of this bond is \$100,000.

5. CLS is the sole company that transports wastewater from the Harvest Glen subdivision, and the Harvest Glen Homeowners Association is the sole customer of CLS.

6. The stipulated flat monthly rate of \$3,520.25 as contracted between CLS and the Harvest Glen Homeowners Association for CLS to provide adequate sewage pump service, including operation and maintenance of the sewage pump, is just and reasonable and in the public interest.

7. The stipulated operating margin of 12.51% is just and reasonable and in the public interest.

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<sup>1</sup> The performance bond is discussed in the hearing transcript of this proceeding at pages 7-8. It was submitted as evidence during the hearing as Exhibit 2.

8. The settlement agreement in this case represents a complete, fair, and reasonable resolution of this proceeding and is in the public interest.

**IT IS THEREFORE ORDERED:**

1. The flat monthly rate of \$3,520.25 as contracted between CLS and the Harvest Glen Homeowners Association for CLS to provide adequate sewage pump service, including operation and maintenance of the sewage pump, is approved.

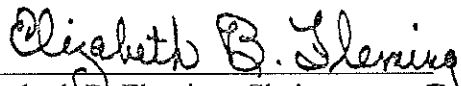
2. The operating margin of 12.51% is approved.

3. CLS shall maintain its books and records with the NARUC system of accounts.

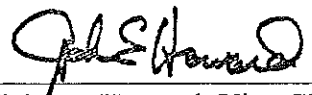
4. The proposed settlement agreement is approved.

4. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

  
Elizabeth B. Fleming, Chairman

ATTEST:

  
John E. Howard, Vice Chairman  
(SEAL)

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION**  
**OF SOUTH CAROLINA**  
**DOCKET NO. 2008-94-S**

**ORIGINAL**

IN RE:

Application of CLS Utilities, LLC	)	
For Approval of the Agreement,	)	
Bond, Operation, Monthly Rate and	)	<b>SETTLEMENT</b>
Service Area For the Sewage Pump	)	<b>AGREEMENT</b>
Station in the Harvest Glen	)	
Subdivision in Greenville County,	)	
South Carolina	)	
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This Settlement Agreement is made by and among CLS Utilities, LLC ("CLS"), and the Office of Regulatory Staff of South Carolina ("ORS"), (hereinafter collectively referred to as the "Parties" or sometimes individually as a "Party").

WHEREAS, on March 6, 2008, CLS filed with the Public Service Commission of South Carolina ("Commission") an Application for Approval of the Agreement, Bond, Operation, Monthly Rate and Service area for the sewage pump station in the Harvest Glen Subdivision in Greenville County, South Carolina ("Application");

WHEREAS, the Parties to this Settlement Agreement are the parties of record in the above-captioned docket and there are no other parties of record in the above-captioned proceeding;

WHEREAS, the Parties have engaged in discussions to determine whether a settlement of this proceeding would be in their best interests;

WHEREAS, following those discussions the Parties have each determined that their interests and the public interest would be best served by settling the above-captioned case under the terms and conditions set forth below:

1. The Parties agree that the monthly rate of \$3,520.25, as contracted for by Agreement between CLS and the Harvest Glen Homeowners Association ("HOA"), the sole customer of CLS, is fair and reasonable and allows CLS to provide its customer with adequate sewage pump service and allows Applicant a fair and reasonable operating margin.

2. The Company and ORS recognize the value of resolving this proceeding by settlement rather than by litigation and, therefore stipulate and agree for the purposes of settlement in this case that an operating margin of 12.51% is just and reasonable under the specific circumstances of this case, including the stipulated rate and projected annual operating and maintenance expenses of CLS.

3. CLS will only be responsible for the operation and maintenance of the Wastewater Pump Station and force main serving Harvest Glen. The sole customer of CLS will be the Harvest Glen HOA. By agreement between CLS and the HOA, CLS will bill the HOA a set flat monthly fee of \$3,520.25. The projected annual operating and maintenance expenses for the operation of the pump station in Harvest Glen have been determined through a Wastewater Rate Study prepared for CLS by Alliance Consulting Engineers which was attached as Exhibit A to the Application in this matter and reviewed by ORS. That Study is a part of the record in this matter and is herewith included in this Agreement by reference.



4. CLS agrees to keep its books and records according to the NARUC Uniform System of Accounts as required by the Commission's rules and regulations.

5. The Parties agree to stipulate into the record before the Commission the pre-filed direct testimonies of CLS witnesses James Caldwell and C. Douglas Clary, Jr., P.E. without objection or cross-examination.

6. The Parties agree to stipulate into the record the pre-filed direct and settlement testimony of ORS witness Elizabeth Ford without objection or cross-examination. The Parties agree that no evidence will be offered in the proceeding by the Parties other than the aforementioned pre-filed testimony and exhibits and this Agreement.

7. The Parties agree to cooperate in good faith with one another in recommending to the Commission that this Settlement Agreement be accepted and approved by the Commission as a fair, reasonable and full resolution of the above-captioned proceeding. The Parties agree to use reasonable efforts to defend and support any Commission Order issued approving this Settlement Agreement and the terms and conditions contained herein.

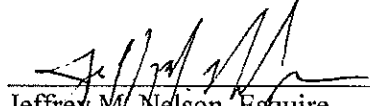
8. The Parties agree that by signing this Settlement Agreement, it will not constrain, inhibit or impair in any way their arguments or positions they may choose to make in future Commission proceedings. If the Commission should decline to approve the Settlement Agreement in its entirety, then any Party desiring to do so may withdraw from the Settlement Agreement without penalty.

9. This Settlement Agreement shall be interpreted according to South Carolina law.

10. Each Party acknowledges its consent and agreement to this Settlement Agreement by authorizing its counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of this Settlement Agreement. Facsimile signatures and email signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the various signature pages combined with the body of the document constituting an original and provable copy of this Settlement Agreement.

WE AGREE:

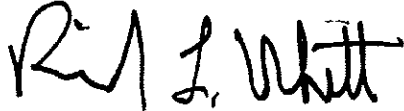
**Representing and binding the Office of Regulatory Staff:**

  
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Jeffrey M. Nelson, Esquire  
Office of Regulatory Staff  
1441 Main Street, Suite 300  
Columbia, SC 29201  
Phone: (803) 737-0823  
Fax: (803) 737-0800  
Email: shudson@regstaff.sc.gov

DATE: June 11, 2008

WE AGREE:

**Representing and binding CLS Utilities, LLC**

A handwritten signature in black ink, appearing to read "R. L. Whitt".

Richard L. Whitt, Esquire  
Attorney for CLS Utilities, LLC  
508 Hampton Street, Suite 300  
Columbia, SC 29201  
Phone: (803) 251-7442  
Fax: (803) 252-3679

DATE: June 9<sup>th</sup>, 2008